



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/32860/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 July 2017
Prepared 17 July 2017**

**Decision & Reasons
Promulgated
On 25 July 2017**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MRS JANET AKOSHIA ARYEE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Omorere, Counsel instructed by Bestway Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Ghana born on 10 June 1968 who appeals against a decision of the Secretary of State made on 7 October 2015 to refuse to issue a residence card under the provisions of the Immigration (EEA) Regulations 2006.

2. It was the appellant's assertion that she had married a Spanish citizen, Francis Adjeiwaa on 12 December 2013 in a proxy marriage in Ghana.
3. The appellant and her claimed husband had been interviewed by the respondent on 6 October 2015 after which the appellant had been refused leave to remain and detained. The reasons for refusal are set out in a lengthy letter served on 9 October 2015. There is a lengthy section therein regarding the position of the Home Office on marriages conducted by proxy. The writer of the letter of refusal relied on the decision of the Tribunal in **CB (validity of marriage: proxy marriage) Brazil [2008] UKIAT 00080** which set out prerequisites for a proxy marriage to be accepted as valid. It was stated that those requirements had been incorporated into instructions to the European Casework Directorate and it was emphasised the marriage must satisfy the requirements of the law of the country in which it took place.
4. The letter also referred to the decision of the Tribunal in **Kareem (proxy marriages - EU law) [2004] UKUT 00024 (IAC)** which stated that any marriage certificate should be issued by a competent authority, and gave details of the evidence required. Not only had the marriage by proxy have to be recognised in the country in which it took place but any marriage certificate had to be issued by a competent authority and evidence adduced that the claimed competent authority was an authority with legal power to create or confirm the facts it attested. It was also stated that there would have to be a validly registered marriage certificate produced or alternative form of evidence proving that the marriage took place as asserted, regardless of whether the marriage was conducted under civil law, Mohammedan law or customary law by proxy.
5. It was emphasised that evidence to show that a proxy marriage was conducted in accordance with the law should also be produced. It was stated that the appellant had submitted a Ghanaian customary marriage certificate which showed that she was married to her EEA national spouse in Ghana on 12 December 2013 by proxy and that the marriage had been registered, but it was stated that such a marriage was governed by the Provisional National Defence Council Law 112 and the Customary Marriage and Divorce (Registration) Law 1985 (amended in 1991) which removed the mandatory requirement to register a customary marriage within a certain timeframe. The terms relating to the registration of customary marriage were also referred to. It was stated that it was accepted that the appellant had provided a Ghanaian customary marriage certificate and therefore demonstrated that she had voluntarily registered her marriage but it was said that the burden of proof was on her to demonstrate the registration was done in accordance with the Customary Marriage and Divorce (Registration) Law 1985. Details of the requirements for registration were set out as were the requirements of the Customary Marriage and Divorce (Registration) Law 1985.
6. The letter of refusal then referred to the marriage certificate produced and stated there needed to be evidence of Ghanaian passports for both parties

to the marriage or in the alternative validly issued birth certificates matched by the appellants' parents' valid Ghanaian passports and evidence of relationship between the parent and the child. It was alleged that birth certificates had not been provided to show that the appellant and sponsor were Ghanaian. It was also stated that in the first schedule to the customary marriage certificate submitted contained a field entitled "signature or thumbprint of husband" and a field entitled "signature or thumbprint of wife" but that these had not been completed. It was stated therefore that the Home Office considered that the appellant had been unable to satisfy the required conditions and thus the legal validity of the marriage could not be accepted for immigration purposes.

7. Reference was made to the statutory declaration produced which stated that the appellant had been represented at her customary wedding by a family member but there was no evidence to show that the appellant and the family member, her father, were related as claimed. It was stated that there was no valid statutory declaration to accompany the customary marriage certificate and in the absence of that evidence that they had both attended the wedding ceremony was required, but had not been produced. A letter from the Ghanaian High Commission referring to documents which were purportedly attached thereto - a statutory declaration dated 29 August 2014 from a notary public, a certification by the Second Deputy Judicial Secretary, a certificate by the Deputy Director, Legal and Consular Bureau and the Form of Register of Customary Marriage issued by the Registrar in Accra which stated that the High Commission might wish to consider whether or not these were genuine was considered but it was alleged that evidence had not been provided to show that that was the case. It was stated therefore it could not be accepted that the claimed proxy marriage had been properly executed.
8. Moreover emphasis was placed on the judgment in **Kareem** on the basis that there was no evidence that the marriage was accepted as genuine in the country of the appellants' sponsors' nationality.
9. The Secretary of State went on to state that the appellant had been given the opportunity to demonstrate the relationship in itself was not one of convenience and, having set out various discrepancies in what had been said at interview it was concluded that the marriage was one of convenience. The letter also said that attempts had been made to contact the sponsor's employer but that had not been successful.
10. The grounds of appeal submitted by the appellant did not advance the appellant's claim or deal with the matters that were raised in the letter of refusal. It was merely asserted that both parties were Ghanaian nationals living in the UK and that they had been married by Ghanaian customary law and practice. What was not present in the grounds of appeal was any detailed analysis of the assertions made in the letter of refusal regarding the requirements for a proxy marriage in Ghana, cross-referenced to documents submitted by the appellant and any argument to

show that the marriage did meet the requirements of the Ghanaian customary law.

11. The appeal was heard by Judge Flynn on 10 October 2016. She had before her statements from the appellant and the sponsor. It is unfortunate that those statements do not engage with the letter of refusal or argue that in fact the requirements of the Ghanaian law were met. Various assertions were made regarding the relationship.
12. Judge Flynn heard evidence from the appellant and her husband. She noted that it was argued that there were three directly relevant issues. First was whether the sponsor was exercising Treaty rights, secondly whether the marriage was recognised in Spain and thirdly whether or not it was one of convenience.
13. The reality is, however that a further question had to be considered: that was whether or not it was accepted that this was a genuine marriage in the sense that the requirements of the Ghanaian customary law were met. I consider that that is a central issue in this appeal because following the decision in **Awuku v SSHD [2016] EWCA CIV 1303** - a judgment which was handed down after the hearing and the promulgation of the determination, it is clear that it is not relevant whether or not the marriage is recognised in the country of the European nationality of the sponsor - what is relevant is whether or not the marriage is recognised in the country in which it is conducted. The judgment in **Kareem** is no longer good law.
14. While the judge considered in some detail the evidence produced and considered there were so many discrepancies therein that it was indicated that this was a marriage of convenience, she also placed weight on the decision in **Kareem** and the fact that there was no evidence to show that the marriage was accepted in Spain.
15. I consider that the judge was placed in very considerable difficulty in this case because although the letter of refusal set out the position in Ghanaian law the issue of whether or not the requirements of Ghanaian law as to the validity of this proxy marriage were met was not aired before her: neither the grounds of appeal nor the submissions of either party focus on that issue.
16. The first issue was therefore whether the marriage was valid in Ghana but there is no clear finding on that point. The second issue is that, if the marriage is found to be valid, whether the Secretary of State had proved that this was a marriage of convenience. As is clear from the judgment in **Collins Agho [2015] EWCA Civ 1198** the burden of proof lies on the respondent to show that the marriage is not genuine. While the Secretary of State relied on various discrepancies these do not seem to me to be ones on which carried weight.

17. I consider that there were errors of law not only in the application of the determination **Kareem**, notwithstanding that that decision was good law at the time of the hearing and the promulgation of the decision, but also in the consideration of validity of the marriage in Ghana and, following from that, consideration of where the burden of proof lay to show that the marriage was one of convenience. If the respondent had discharged that burden then the consideration of evidence and whether the marriage was a genuine marriage and therefore the issue of discrepancies that arose at interview would only then fall to be considered.
18. I therefore set aside the determination. The appeal will proceed to a hearing afresh in the First-tier Tribunal. I would emphasise that it is incumbent on both parties to put forward arguments and evidence as to the validity of this proxy marriage and make clear submissions on that issue.

Notice of Decision

The appeal is allowed to the extent that it is remitted to the First-tier for a hearing afresh on all issues.

No anonymity direction is made.

Signed



Date: 21 July 2017

Upper Tribunal Judge McGeachy

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